

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	
Universal Service)	CC Docket No. 96-45
)	
Petition by RCC Minnesota, Inc.)	DA 04-2911
And Wireless Alliance, LLC, Pursuant)	
To 47 C.F.R. Section 54.207(c), for)	
Commission Agreement in Redefining)	
The Service Areas of Rural Telephone)	
Companies in the State of Minnesota)	

REPLY COMMENTS OF RCC MINNESOTA, INC. AND WIRELESS ALLIANCE, LLC

David A. LaFuria
Steven M. Chernoff
Lukas Nace Gutierrez & Sachs, Chartered
1650 Tysons Boulevard
Suite 1500
McLean, Virginia 22102

October 7, 2004

Attorneys for RCC Minnesota, Inc. and
Wireless Alliance, LLC

TABLE OF CONTENTS

I. INTRODUCTION	1
II. PROMPT SERVICE AREA REDEFINITION PROMOTES THE PRO- COMPETITIVE, DEREGULATORY GOALS OF THE ACT	2
III. THE PROPOSED SERVICE AREA REDEFINITION IS CONSISTENT WITH THE ACT AND COMMISSION PRECEDENT	6
IV. THE PETITION AND THE RECORD AT THE STATE LEVEL PROVIDE AMPLE EVIDENCE THAT THE MPUC’S PROPOSAL TAKES THE JOINT BOARD’S RECOMMENDATIONS INTO ACCOUNT.....	9
V. MIC'S “RESALE” ARGUMENTS SHOULD BE REJECTED.....	14
VI. THERE IS NO BASIS FOR SUSPENSION OF THE FCC’S REDEFINITION PROCEDURES PENDING THE JOINT BOARD REFERRAL.....	15
VII. CONCLUSION.....	17

SUMMARY

The service area redefinition proposed by RCC Minnesota, Inc., and Wireless Alliance, LLC (collectively, “RCC”), promotes the pro-competitive, deregulatory goals of the Telecommunications Act of 1996 and fully takes into consideration the recommendations of the Federal-State Joint Board on Universal Service (“Joint Board”). The proposed redefinition will remove barriers to competitive entry by enabling RCC’s designation as an eligible telecommunications carrier (“ETC”) to take effect in rural incumbent local exchange carrier (“ILEC”) service areas it is not licensed to serve in their entirety. In combination with the pending petition by the Minnesota Public Utility Commission (“MPUC”) to redefine several rural ILEC service areas, the proposed redefinition will enable RCC to assume ETC obligations and provide competitive benefits to rural consumers throughout its licensed service area.

Despite the overwhelming precedent at the FCC and state level in which rural ILEC service areas were redefined in a manner that is substantially identical to the MPUC’s proposal – including the FCC-approved redefinition of Frontier Communications of Minnesota, Inc. – Citizens Telecommunications Company of Minnesota, LLC and Minnesota Independent Coalition urge the FCC to prevent the same result in this case. These commenters do not attempt to distinguish this case from the Frontier redefinition, nor do they even acknowledge the many prior cases in which the same result was achieved. Citizens does not even have standing to object to RCC’s petition – which concerns only Benton Cooperative Telephone Company and Sherburne County Rural Telephone Company – and appears to be using this narrowly scoped proceeding to get the last word on the pending MPUC petition, whose comment cycle closed over a year ago. Its chief complaint – that the proposed redefinition somehow is somehow inconsistent with the MPUC order designating RCC – is without merit.

In attempting to reopen the “public interest” determination conclusively made by the MPUC, the ILEC commenters ignore a critical point in RCC’s petition: the FCC must adhere to its policy of deference to state commissions in the determination of appropriate service area definitions within their own states, as the FCC recognized in *Virginia Cellular*. The MPUC held a rigorous adversarial proceeding that lasted over a year before issuing the decision in which it approved the redefinition proposal that is now before the FCC. The Minnesota Department of Commerce urged the MPUC to adopt the proposed redefinition, finding that it would promote competitive entry. Both MIC and Citizens participated in that proceeding and had multiple chances to present their arguments on redefinition. Their arguments were appropriately and soundly rejected by the ALJ, and by the MPUC ruling on exceptions. Accordingly, suggestions that the MPUC issued a “blanket” approval, or otherwise did not fully consider the applicable statutory requirements, are not supported by the fulsome record before the MPUC.

Finally, there is no legal basis for the ILECs’ anticompetitive request to delay the Petition until the Joint Board and the FCC complete their review of applicable rules. The FCC’s current redefinition rules were validly adopted and should be enforced until such time as they are changed.

For all of these reasons, the FCC should grant its concurrence and allow the proposed service area redefinition to become effective without further action.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	
Universal Service)	CC Docket No. 96-45
)	
Petition by RCC Minnesota, Inc.)	DA 04-2911
And Wireless Alliance, LLC, Pursuant)	
To 47 C.F.R. Section 54.207(c), for)	
Commission Agreement in Redefining)	
The Service Areas of Rural Telephone)	
Companies in the State of Minnesota)	

REPLY COMMENTS OF RCC MINNESOTA, INC. AND WIRELESS ALLIANCE, LLC

RCC Minnesota, Inc. at Wireless Alliance, LLC (collectively, “RCC”), by counsel, hereby replies to the comments submitted in response to RCC’s Petition for Commission agreement in redefining the service areas of several Minnesota incumbent local exchange carriers (“ILECs”). Citizens Telecommunications Company of Minnesota, Inc. (“Citizens”) and Minnesota Independent Coalition (“MIC”) submitted comments in this proceeding. As demonstrated below, no commenter has raised any issue that would justify opening a proceeding or otherwise delaying a grant of the Petition.

I. INTRODUCTION

The redefinition proposed in RCC’s Petition meets the applicable criteria established by the FCC and the Joint Board. Redefinition along wire-center boundaries is an essential step needed to remove barriers to competitive entry, and it is consistent with prior actions taken by the FCC and numerous state commissions. The universal service goals of the Act – including the

Joint Board’s recommendations pertaining to service area redefinition – were thoroughly and conscientiously considered during the rigorous, adversarial proceeding that was undertaken at the state level. That proceeding resulted in an order in which the MPUC concluded, *inter alia*, that “the record does not support the suggestion that the Company is targeting areas based on their cost characteristics. Rather, the Company is targeting all areas within its licensed service territory”; “The Commission is not persuaded that this [redefinition] will result in significant additional administrative burdens”; and “[redefining] these service areas is consistent with the regulatory status accorded rural telephone companies under the Act [which will] remain unchanged”.

The comments submitted by ILECs and their representatives do nothing to call this reasoned proposal into question. The ILECs recycle essentially the same arguments the MPUC soundly and properly rejected below – not only in the proceeding to designate RCC as an ETC, but also in the Midwest Wireless ETC designation proceeding. The ILECs and their representatives are now engaged in a last-ditch effort to thwart the MPUC’s will and derail competition. Not unexpectedly, the ILEC commenters downplay or ignore the overwhelming weight of precedent in which the FCC and several other states granted service area redefinition substantially identical to that requested by the MPUC. Moreover, those commenters ignore the substantial record and precedent that support a grant of the Petition in a transparently self-serving attempt to manufacture a case of first impression. These efforts should be rejected, as similar efforts have been rejected in prior cases.

II. PROMPT SERVICE AREA REDEFINITION PROMOTES THE PRO-COMPETITIVE, DEREGULATORY GOALS OF THE ACT

Service area redefinition is a vital means of removing barriers to competition. For this reason, petitions for concurrence with service area redefinition must be reviewed in the context

of the congressional mandate to promote new technologies and facilitate competitive entry “in all telecommunications markets.”¹ Indeed, the statutory provisions governing service area redefinition were adopted as part of the Telecommunications Act of 1996 (“Act”),² a sweeping piece of legislation that specifically commanded the FCC to establish a “pro-competitive, de-regulatory national policy framework” designed to accelerate the deployment of advanced telecommunications to all Americans. When it adopted this legislation, Congress recognized that the existing system of universal service subsidies — under which incumbent local exchange carriers (“ILECs”) had exclusive access to implicit and explicit universal service subsidies — could not be justified in a regulatory environment that sought to foster competition.³ Therefore, Congress directed the FCC to reform the system to ensure that universal service subsidies become explicit, predictable, and sufficient to achieve the purposes of the Act.⁴

Soon after the passage of the Act, the FCC reaffirmed Congress’s assessment of the necessity of making universal service subsidies transparent and accessible to competitors. In the *Local Competition Order*, the FCC stated:

The present universal service system is incompatible with the statutory mandate to introduce efficient competition into local markets, because the current system distorts competition in those markets. For example, without universal service reform, facilities-based entrants would be forced to compete against monopoly providers that enjoy not only the technical, economic, and marketing advantages of incumbency, but also subsidies that are provided only to the incumbents.⁵

¹ See Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. at 113.

² Pub. L. No. 104-104, 110 Stat. 56 (1996). The Act amends the Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.*

³ See *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 406 (5th Cir. 1999) (“*TOPUC*”) (“Because opening local telephone markets to competition is a principal objective of the Act, Congress recognized that the universal service system of implicit subsidies would have to be re-examined.”).

⁴ 47 U.S.C. §§ 253(b)(5), 254(e).

⁵ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd 15499, 15506-07 (1996) (“*Local Competition Order*”).

To remedy this competitive disparity, the FCC ruled that the principle of competitive and technological neutrality would guide the formulation of its universal service policies.⁶ Specifically, the FCC declared:

Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.⁷

The FCC has consistently reaffirmed the pro-competitive goals of its universal service and ETC designation policies,⁸ and it recently confirmed that “[c]ompetitive neutrality is a fundamental principle of the Commission’s universal service policies.”⁹

Despite the Commission’s dedication to competitive neutrality and its congressional mandate to promote competition, some commenters nevertheless seek to preclude outright the designation of ETC applicants whose licensed boundaries differ from those of the incumbents. While such a policy would do much to preserve the ILECs’ lock on the local exchange market, it is at odds with the service area redefinition provisions of the Act and the FCC’s rules, which

⁶ See generally, CC Docket No. 96-45; see also, *Notice of Proposed Rulemaking and Order Establishing Joint Board*, 11 FCC Rcd 18092 (1996); *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776 (1997) (“*First Report and Order*”); *Ninth Report and Order and Eighteenth Order on Reconsideration*, 14 FCC Rcd 20432 (1999) (“*Ninth Report and Order*”); *Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11244 (2001) (“*Fourteenth Report and Order*”).

⁷ *First Report and Order*, *supra*, 12 FCC Rcd at 8801.

⁸ See, e.g., *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, 16 FCC Rcd 18133, 18137 (2001) (“*Pine Ridge*”) (“Designation of qualified ETCs promotes competition and benefits consumers by increasing customer choice, innovative services, and new technologies.”); *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, 16 FCC Rcd 48 (2000) (“*Wyoming ETC Order*”) (“[C]ompetition will result not only in the deployment of new facilities and technologies, but will also provide an incentive to the incumbent rural telephone companies to improve their existing network to remain competitive, resulting in improved service to Wyoming consumers. In addition, we find that the provision of competitive service will facilitate universal service to the benefit of consumers . . . by creating incentives to ensure that quality services are available at ‘just, reasonable, and affordable rates.’”) (footnote omitted).

⁹ *Guam Cellular and Paging, Inc., Petition for Waiver of Section 54.314 of the Commission’s Rules and Regulations*, CC Docket No. 96-45, DA 03-1169 at ¶ 7 (Tel. Acc. Pol. Div. rel. April 17, 2003).

seek to ensure that the principle of competitive neutrality is served when new ETCs seek to serve an area that differs from an ILEC's study area. Specifically, Section 214(e)(5) of the Act states:

In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of the Federal-State Joint Board instituted under Section 410(c), establish a different definition of service area for such company.¹⁰

MIC's description of this section as a "presumption" against redefinition¹¹ is simply mistaken. To the contrary, it provides an explicit means for CMRS providers that are otherwise qualified for ETC designation to receive support in study areas they lack the ability to serve entirely.

Indeed, the FCC adopted a streamlined federal-state process for redefining service areas under Section 214(e)(5) to fulfill the competitively neutral intent of that statutory provision.¹² Specifically, after being subjected to notice and comment, a state's proposal to redefine a LEC service area automatically becomes effective 90 days after the proposal is placed on public notice, unless there are unusual circumstances that require further consideration in a new notice-and-comment proceeding. On multiple occasions, the Commission has utilized this procedure to consider requests for concurrence with proposed rural ILEC service area redefinitions, granting its concurrence and allowing the redefinition to take effect.¹³ The same process should be applied here, that is, the proposed service area redefinition should be allowed to enter into effect unless

¹⁰ 47 U.S.C. § 214(e)(5).

¹¹ MIC Comments at p. 2.

¹² See 47 C.F.R. § 54.207(c)(3)(ii). See also *First Report and Order*, *supra*, 12 FCC Rcd at 8881.

¹³ See, e.g., *Smith Bagley, Inc. Petitions for Agreement to Redefine the Service Areas of Navajo Communications Company, Citizens Communications Company of the White Mountains, and CenturyTel of the Southwest, Inc. on Tribal Lands within the State of Arizona*, DA 01-409 (WCB rel. Feb. 15, 2001); *Smith Bagley, Inc. Petitions to Redefine the Service Area of Table Top Telephone Company on Tribal Lands within the State of Arizona*, DA 01-814 (WCB rel. April 2, 2001); *Smith Bagley, Inc. Petitions to Redefine the Service Area of CenturyTel of the Southwest, Inc. in the State of New Mexico*, DA 02-602 (WCB rel. March 13, 2002).

there is a specific showing that harm would result. As demonstrated below, no party has provided any reason to delay or deny the MPUC's proposal.

III. THE PROPOSED SERVICE AREA REDEFINITION IS CONSISTENT WITH THE ACT AND COMMISSION PRECEDENT

Consistent with federal universal service objectives, the service area redefinition proposed in the MPUC's Petition appropriately seeks to redefine rural ILEC service areas in a competitively neutral manner. Commercial mobile radio service ("CMRS") providers like RCC are restricted to serving those areas within their FCC-authorized Cellular Geographic Service Area ("CGSA") and Personal Communications Service ("PCS") markets, whose boundaries generally do not correspond to those of rural LEC study areas. Thus, when a CMRS carrier serving customers within a rural LEC study area seeks designation as an ETC, it cannot be designated, and therefore cannot receive any high-cost support, unless the state and the FCC agree to redefine the affected rural LEC's service area. In fact, if such service area redefinition does not occur, CMRS carriers will be effectively precluded from competing in those areas solely because of the technology they use.¹⁴

The FCC and several state commissions have redefined rural ILEC service areas under Section 214(e)(5) of the Act to allow CMRS providers' ETC status to take effect throughout their licensed service areas. For example, in 1999, the FCC concurred with a proposal by the Washington Utilities and Transportation Commission and roughly 20 rural ILECs both to disaggregate support and to redefine each of the ILECs' wire centers along wire center boundaries. In that case, the FCC concluded:

¹⁴ See *First Report and Order*, *supra*, 12 FCC Rcd at 8879-80 ("...if a state adopts a service area that is simply structured to fit the contours of an incumbent's facilities, a new entrant, especially a CMRS-based provider, might find it difficult to conform its signal or service area to the precise contours of the incumbent's area, giving the incumbent an advantage.").

[O]ur concurrence with rural ILEC petitioners' request for designation of their individual exchanges as service areas is warranted in order to promote competition. The Washington Commission is particularly concerned that rural areas . . . are not left behind in the move to greater competition. Petitioners also state that designating eligible telecommunications carriers at the exchange level, rather than at the study area level, will promote competitive entry by permitting new entrants to provide service in relatively small areas . . . We conclude that this effort to facilitate local competition justifies our concurrence with the proposed service area redefinition.¹⁵

Last year, the FCC granted its concurrence with a proposal by the Colorado Public Utilities Commission ("COPUC") to redefine the service area of CenturyTel of Eagle, Inc., also along wire center boundaries. In its petition seeking FCC concurrence, COPUC explained that, as in the Washington case, redefinition was necessary to permit competitive entry in rural areas where consumers lack choices:

[M]aintaining CenturyTel's rural service area in a multiple, non-contiguous exchange configuration, in effect, precludes potential competitive providers from seeking ETC designation even for areas where those companies can provide service, and can meet all other requirements for designation as an ETC. CenturyTel will receive universal service support, but competitive providers will not. This circumstance is a barrier to entry.¹⁶

After considering COPUC's petition and comments submitted by both ILEC and competitive ETC representatives, the FCC granted its concurrence by allowing the proposed redefinition to go into effect without opening a proceeding. The FCC has concurred with similar proposals in New Mexico and Arizona to permit wireless competitive ETCs to receive high-cost support in rural ILEC study areas they cannot cover completely.¹⁷ Additionally, the FCC has proposed the

¹⁵ *Petition for Agreement with Designation of Rural Company Eligible Telecommunications Carrier Service Areas and for Approval of the Use of Disaggregation of Study Areas for the Purpose of Distributing Portable Federal Universal Service Support, Memorandum Opinion and Order*, 15 FCC Rcd 9924, 9927-28 (1999).

¹⁶ *Petition by the Public Utilities Commission of the State of Colorado to Redefine the Service Area of CenturyTel of Eagle, Inc., Pursuant to 47 CFR § 207(c) at p. 4 (filed Aug. 1, 2002) at p. 12.*

¹⁷ *See CenturyTel Arizona Notice, supra; CenturyTel N.M. Notice, supra; Table Top Notice, supra.*

redefinition of several Alabama rural ILEC service areas along wire center boundaries to permit two newly designated wireless ETCs to begin receiving support throughout their licensed service areas.¹⁸ Similarly, in December 2002, the Wisconsin Public Service Commission, in granting ETC status to United States Cellular Corporation, agreed with the applicant's proposal to redefine rural ILEC service areas so as to allow a CMRS carrier to be designated throughout its entire licensed service territory.¹⁹ Finally, there is the previous case in which the MPUC itself obtained the FCC's concurrence with its proposal to redefine all of the wire centers of Frontier Communications of Minnesota, Inc. ("Frontier") as separate service areas.²⁰

The ILEC commenters have opted to ignore applicable precedent, completely failing to distinguish this case. Indeed, the redefinition requested by RCC and approved by the MPUC is, in all relevant respects, the same as that granted in the cases described above. As in the prior cases discussed above, the proposed redefinition will remove the last obstacle facing competitive carriers seeking to provide consumers in the affected ILECs' service areas with high-quality service and an array of pricing plans as a real competitive alternative to LEC service. No commenter has advanced any credible argument that would distinguish this case from the many prior cases in which substantially identical redefinition was achieved. The proposed redefinition will benefit rural consumers, is consistent with FCC and state precedent, and should be allowed to become effective without further action.

¹⁸ See *RCC Holdings, Inc.*, DA 02-3181 at ¶ 26 (W.C.B. rel. Nov. 27, 2002) ("*RCC Alabama ETC Order*") (app. for rev. pending) at ¶¶ 33, 37.

¹⁹ United States Cellular Corporation, 8225-TI-102 (Wisc. PSC Dec. 20, 2002) at p. 9 (petition for FCC concurrence not yet filed).

²⁰ Petition of the Minnesota Public Utilities Commission for FCC Agreement to Redefine the Service Area of Frontier Communications of Minnesota, Inc., CC Docket No. 96-45 (filed Oct. 26, 2000).

IV. THE PETITION AND THE RECORD AT THE STATE LEVEL PROVIDE AMPLE EVIDENCE THAT THE MPUC’S PROPOSAL TAKES THE JOINT BOARD’S RECOMMENDATIONS INTO ACCOUNT

Although some ILEC commenters attempt to complicate the picture, the requirements for redefining a rural ILEC service area are straightforward. Specifically, under Section 214(e)(5), a service area may be redefined as something other than an ILEC’s study area if “the Commission and the States, after taking into account recommendations of a Federal-State Joint Board ... establish a different definition of service area for such company.”²¹ After a state has conducted its own analysis and concluded that redefinition is justified, the state commission or another party must seek the FCC’s concurrence by submitting a petition that includes: (1) a description of the proposed redefinition; and (2) the state commission’s ruling or other statement presenting the reasons for the proposed redefinition, including an analysis that takes the Joint Board’s recommendations into account.²²

Consistent with this requirement, the Petition provided both a description of the proposed redefinition²³ and an analysis of the proposed redefinition under the framework provided in the Joint Board’s recommendations. Specifically, with regard to the Joint Board’s recommendations, the Petition explains that (1) the Joint Board’s concerns regarding uneconomic receipt of high levels of support in low-cost areas (commonly referred to as “cream skimming”) are minimized, if not eliminated, by the rural ILECs’ decision to disaggregate and target support on a more granular level than the entire study area; (2) the proposed redefinition takes into account the special status of rural carriers under the Act; and (3) the proposed redefinition will not impose

²¹ 47 U.S.C. § 214(e)(5).

²² 47 C.F.R. § 54.207(c)(1).

²³ *See* Petition at p. 2.

any undue administrative burden on the affected rural ILECs, since they already have the ability to calculate support down to the wire-center level (and in fact have already done so).

Attempts by Citizens to point out inconsistencies between the proposed redefinition and the MPUC's findings below have already been rejected by the MPUC, and Citizens' assertions carry no more weight here.²⁴ Specifically, Citizens' claim that the MPUC "did not propose to redefine [Citizens' Wyoming exchange, Mid-State's Murdock exchange, Benton's Foreston and Ramey exchanges, and Sherburne's Glendorado exchange] on a wire center basis"²⁵ is refuted by the MPUC Order, which approves RCC's proposal "that these areas be redefined so that each wire center is a separate service area and RCC's service area be defined consistent with those wire centers. Where RCC serves only a portion of a wire center, RCC's service area would be a portion of the wire center which it serves."²⁶ Citizens yet again fails to grasp that the request for FCC concurrence is in the redefinition of rural ILECs' service areas along wire-center boundaries, not below wire-center boundaries. As the MPUC Order makes clear, once the ILECs' service areas are redefined to the wire center, the MPUC may designate competitive ETCs for service areas that are made up of groups of individual wire centers and portions thereof. While Citizens may not agree with the decision that RCC's service area should be a portion of a wire center where its licensed service area does not cover the wire center in its entirety, that determination has already been made by the MPUC and is not currently before the FCC.²⁷

²⁴ See MPUC Comments (filed Sept. 9, 2003) at pp. 3-4.

²⁵ Citizens Comments at p. 5.

²⁶ MPUC Order at p. 10.

²⁷ Citizens argues that the MPUC's designation of RCC for a service area that includes portions of wire centers is inconsistent with the FCC's *Highland Cellular* order, 19 FCC Rcd 6422 (2004). On the contrary, the FCC's decision against designating Highland Cellular for a portion of a wire center was made on grounds that are

The Petition was submitted along with copies of the ALJ Decision and the MPUC Order, which provide a detailed account of the proceeding below. This proceeding, in addition to the hearing in the Midwest proceeding, laid the groundwork and provided a sound basis for the MPUC's adoption of RCC's service area redefinition proposal. In both the RCC and Midwest proceedings, Citizens, MIC, and other parties had numerous opportunities to brief the MPUC on the merits of redefining the affected rural ILEC service areas to the wire-center level. The parties submitted direct, reply, rebuttal, and surrebuttal testimony from at least eleven witnesses, including expert witnesses who dealt extensively with the service area redefinition issue. The MPUC received a thoroughgoing analysis of the proposed service area redefinition from all parties, including how it relates to the Joint Board's recommendations. On the basis of the fulsome record before it, the MPUC properly concluded that the proposed service area redefinition is warranted pursuant to the Joint Board's recommendations.

The MPUC found that cream skimming was unlikely to result because of the rural ILECs' opportunity to disaggregate support under Section 54.315 of the FCC's rules.²⁸ Specifically, under the disaggregation framework adopted by the FCC in May 2001, all rural ILECs had the opportunity to target support levels more accurately in order to reduce the possibility that competitors will receive improper incentives to enter low-cost areas.²⁹ The MPUC noted that the affected ILECs had already disaggregated support pursuant to those rules,

inapplicable here, *see* Petition at p. 15 n.48, and the MPUC correctly observed that *Highland Cellular* does not represent a total ban on partial wire center designations. *See* MPUC Supplemental Comments in CC Docket No. 96-45 at p. 3 (filed May 14, 2004).

²⁸ *See* ALJ Decision at para. 50; MPUC Order at p. 14.

²⁹ *See* 47 C.F.R. § 54.315(a). *See also Fourteenth Report and Order, supra.*

effectively moving support out of low-cost areas in which a competitor might otherwise be able to receive uneconomic levels of support.³⁰

No commenter has even attempted to demonstrate that RCC is targeting low-cost areas in which high levels of support are available. The only statement in this regard is MIC's assertion that "there is no indication that RCC will actually provide service" in the areas to be redefined.³¹ This is an odd position to take, given that RCC's latest line counts to USAC show that it is currently serving customers in each of the Benton and Sherburne wire centers that are "on the edge of Petitioners' license area".³² Aside from MIC's obvious disregard for the facts, MIC misses the obvious point: the high-cost program was opened to competitors to provide them with critical funding for the construction and deployment of infrastructure to serve areas in which it would otherwise make no economic sense to serve. Even if MIC could demonstrate that RCC's service is primarily available in more densely settled areas, this is because it has not had the same access to funding the ILECs have had for decades. With high-cost support will come the opportunity to expand service into sparsely settled areas that traditionally lack choices in telecommunications service.

Moreover, as the Petition notes, the affected ILECs have already taken action to reduce the possibility of cream skimming by more accurately targeting support levels to wire centers and cost zones within their study areas.³³ Contrary to MIC's belief,³⁴ disaggregation of support is

³⁰ See ALJ Decision at p. 15.

³¹ MIC Comments at p. 6.

³² See RCC Minnesota, Inc., High Cost Loop Support Line Count Filing, Sept. 30, 2004 deadline (not yet eligible areas).

³³ See Petition at pp. 10-11.

³⁴ See MIC Comments at pp. 4-5.

highly relevant to redefinition and can be decisive in determining whether a service area redefinition proposal will result in cream skimming.³⁵

The MPUC also concluded that the proposed service area redefinition properly took into account the affected ILECs' special status as rural telephone companies.³⁶ The MPUC correctly noted that the exemptions accorded to rural ILECs under Section 214(f) of the Act "remain unchanged" as a result of the proposed service area redefinition. The MPUC further noted that service area redefinition does not in any way diminish the careful consideration, including a determination of public interest, that the MPUC must give to any application for competitive ETC status in areas served by rural ILECs.³⁷

Finally, the MPUC concluded that the proposed service area redefinition would not impose significant additional administrative burdens on rural ILECs.³⁸ This finding is essentially unchallenged. MIC asserts that "far less than a majority of LECs in Minnesota" have disaggregated support, yet it ignores the fact that RCC's petition concerns only two ILECs, each of which opted to disaggregate under Path 3. To the extent MIC is concerned that the ILECs' disaggregation plans are not adequate, the ILECs may address any such concerns by petitioning

³⁵ See *Pine Ridge, supra*, 16 FCC at 18141 ("We . . . note that rural telephone companies now have the option of disaggregating and targeting high-cost support below the study area level so that support will be distributed in a manner that ensures that the per-line level of support is more closely associated with the cost of providing service. Therefore, any concern regarding 'cream-skimming' of customers that may arise in designating a service area that does not encompass the entire study area of the rural telephone company has been substantially eliminated.") (footnote omitted).

³⁶ See MPUC Order at p. 12.

³⁷ See *id.* Although some commenters would like to re-litigate the "public interest" case that was fully argued and resolved at the state level (see MIC Comments at p. 2; Citizens Comments at p. 6), the MPUC had exclusive jurisdiction over that question pursuant to Section 214(e)(2) of the Act. The determination that a grant of Midwest's petition would serve the public interest was made with finality by the MPUC and is not appealable to the FCC.

³⁸ See *id.*

the MPUC to modify their disaggregation plans³⁹ – indeed, RCC’s petition suggests the FCC encourage the MPUC to open a proceeding should such modifications be necessary.⁴⁰

V. MIC’s “RESALE” ARGUMENTS SHOULD BE REJECTED

MIC incorrectly argues that competitive ETCs should be required to offer resold services if they lack the facilities to serve every portion of an ILEC’s study area.⁴¹ Tellingly, MIC fails to cite any FCC or state decision requiring a competitive ETC to use resale as a condition for ETC status. Imposing such a requirement on RCC would be inappropriate for several reasons.

First, requiring an ETC to serve customers in some areas by reselling another carrier’s service would directly contradict the FCC’s conclusions that an important benefit of competitive entry in rural areas is “the deployment of new facilities and technologies” as well as the creation of an “incentive to the incumbent rural telephone companies to improve their existing network to remain competitive.”⁴² Second, because the FCC’s cellular resale rule expired in November 2002, RCC is by no means assured of the continued cooperation of other carriers or the ability to resell facilities pursuant to reasonable rates, terms, and conditions.

Third, any requirement to provide resold services can only be properly applied within RCC’s licensed service area, where it has an incentive and ability to construct facilities. Outside

³⁹ See 47 C.F.R. §§ 54.315(b)(4); 54.315(c)(5), 54.315(d)(5).

⁴⁰ See Petition at pp. 11-12.

⁴¹ See MIC Comments at pp. 3-4.

⁴² *Wyoming ETC Order*, *supra*, 16 FCC Rcd at 55. See also *NPCR, Inc. d/b/a Nextel Partners*, DA 04-2667 at para. 20 (W.C.B. rel. Aug. 25, 2004) (“Although Nextel and other CMRS operators may already offer service in the subject markets, designating Nextel as an ETC will further the Commission’s universal service goals by enabling Nextel to better expand and improve its network to serve a greater population and increase competitive choice for customers within the study areas of its ETC designation.”); See also Remarks of Michael K. Powell, Chairman, Federal Communications Commission, at the Goldman Sachs Communicopia XI Conference, New York, NY (Oct. 2, 2002) (“Only through facilities-based competition can an entity bypass the incumbent completely and force the incumbent to innovate to offset lost wholesale revenues.”)

of its service area, long-term resale would be completely unworkable for RCC and for Minnesota's consumers. RCC would not be able to control other carriers' wireless networks, leaving it unable to provision service, improve service, or make any necessary network adjustments to provide appropriate service quality. RCC would not be able to ensure that it could meet any ETC commitments, such as toll blocking or toll limitation. At best, RCC could offer a resold wireline service to customers, which is no choice at all.

Finally, a resale requirement could not possibly be competitively neutral and would have the effect of prohibiting competitive entry on the arbitrary basis of a preference for ILEC wire center boundaries over wireless license boundaries. The FCC has held that an ETC cannot receive support for customers it serves solely via resale.⁴³ Thus, RCC would be required to provide service to customers for whom it would receive no support. Wireline LECs do not face a similar unfunded mandate, and to selectively impose such a requirement on competitors using wireless technology would violate the FCC's core principal of competitive neutrality.⁴⁴

VI. THERE IS NO BASIS FOR SUSPENSION OF THE FCC'S REDEFINITION PROCEDURES PENDING THE JOINT BOARD REFERRAL

The rural ILECs, faced with universal service rules that promise to level the competitive playing field in rural areas, have been increasingly vocal in demanding the suspension of those rules. In particular, the ILECs have used the FCC's referral to the Joint Board⁴⁵ to argue, in effect, that all pro-competitive policies must be suspended until the Commission develops rules

⁴³ See *First Report and Order*, *supra*, 12 FCC Rcd at 8873.

⁴⁴ See *id.* at 8801.

⁴⁵ See Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process, *Public Notice*, CC Docket No. 96-45, FCC 03J-1 (rel. Feb. 7, 2003) ("*Joint Board Notice*").

that are more ILEC-friendly.⁴⁶ These attempts to prevent the application of validly adopted FCC rules must be rejected.

The service area redefinition procedure embodied in the FCC's rules was adopted after being duly subjected to notice and comment in a full rulemaking proceeding and withstood a challenge in federal court. Whatever changes are wrought by the Joint Board's deliberations and subsequent FCC proceedings will apply to all ETCs, including those designated since the referral of issues to the Joint Board. Existing rules must be applied as written, until such time as they are changed through appropriate rulemaking procedures.

It is highly doubtful that the Joint Board's deliberations will yield any changes that are relevant to this proceeding, which concerns only the redefinition of a particular carrier's service area. Indeed, the redefinition issue constitutes only a small part of the referral, in the form of a question — posed at the very end of the *Public Notice* — as to whether the FCC should provide additional “guidance” regarding the manner in which disaggregation of support should be considered in redefining service areas.⁴⁷ It is difficult to imagine what kind of “guidance” would compel the rejection of the redefinition of service areas to the wire center level when the affected carriers have already disaggregated to the same level and the FCC's rules provide for the possibility of revising disaggregation plans on an ongoing basis. Accordingly, the only practical effect of suspending the FCC's concurrence with proposed service area redefinition would be to forestall competitive entry and protect incumbents, contrary to the goals of the 1996 Act.⁴⁸

⁴⁶ See MIC Comments at pp. 7-9.

⁴⁷ See *Joint Board Notice, supra*, at ¶ 10.

⁴⁸ MIC's casual assertion that the FCC “has taken a similar approach before” (p. 9) finds no support in the cited authority. The interim cap on high-cost loop support was adopted only through notice-and-comment proceedings of general applicability, not through case-by-case regulatory fiat as MIC urges in this case. See *Federal-State Joint Board on Universal Service, Report and Order*, 11 FCC Rcd 7920, 7922 (1996).

Finally, the FCC should reject MIC's request to delay the instant petition because of the MPUC's related redefinition petition that is currently pending. If anything, that is a reason to give expedited treatment to RCC's Petition and simultaneously grant concurrence with both the MPUC's and RCC's petitions. As RCC explained in its Petition, RCC and Midwest combine to serve the vast majority of ILEC service areas affected by both petitions, largely eliminating any possibility that rural consumers will lack competitive options in substantial areas. A grant of both petitions will finally give effect to the MPUC's determination that rural consumers will benefit from RCC's designation throughout its licensed service area.

VII. CONCLUSION

RCC's proposal to redefine rural ILEC service areas is consistent with the Act's "pro-competitive, de-regulatory" objectives, properly takes the Joint Board's recommendations into account, and will not result in harm to any party. No commenter has provided any reason to delay the redefinition process provided under the FCC's rules. Accordingly, the FCC should grant its concurrence and allow the proposed service area redefinition to become effective without taking any further action.

Respectfully submitted,

**RCC Minnesota, Inc. and
Wireless Alliance, LLC**

By: /s/ Steven M. Chernoff
David LaFuria, Esq.
Steven Chernoff, Esq.
Lukas Nace Gutierrez & Sachs, Chartered
1650 Tysons Boulevard
Suite 1500
McLean, Virginia 22102

Its Counsel

Dated: October 7, 2004

CERTIFICATE OF SERVICE

I, Steven M. Chernoff, an associate in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this 7th day of October, 2004, served via e-mail a copy of the foregoing *REPLY COMMENTS OF RCC MINNESOTA, INC. AND WIRELESS ALLIANCE, LLC*, filed today via ECFS, to the following:

Chairman Michael Powell
Federal Communications Commission
445 12th Street, SW, Room 8B201
Washington, D.C. 20554

Commissioner Kathleen Q. Abernathy
Federal Communications Commission
445 12th Street, SW, Room 8-A204
Washington D.C. 20554

Commissioner Kevin J. Martin
Federal Communications Commission
445 12th Street, S.W., Room 8-C302
Washington, D.C. 20554

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, S.W., Room 8-A302
Washington, D.C. 20554

Commissioner Jonathan Adelstein
Federal Communications Commission
445 12th Street, S.W., Room 8-A302
Washington, D.C. 20554

Bryan Tramont, Chief of Staff
Office of the Chairman
Federal Communications Commission
445 12th Street, SW, Room 8-B201
Washington, D.C. 20554

Christopher Libertelli, Senior Legal Advisor
Office of the Chairman
Federal Communications Commission
445 12th Street, SW, Room 8-B201
Washington, D.C. 20554

Matthew Brill, Acting Senior Legal Advisor
Office of Commissioner Abernathy
Federal Communications Commission
445 12th Street, SW, Room 8-A204B
Washington, D.C. 20554

Jennifer Manner, Senior Counsel
Office of Commissioner Abernathy
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Sam Feder, Legal Advisor
Office of Commissioner Martin
Federal Communications Commission
445 12th Street, SW, Room 8-C302
Washington, D.C. 20554

Jordan Goldstein, Senior Legal Advisor
Office of Commissioner Copps
Federal Communications Commission
445 12th Street, SW, Room 8-A302F
Washington, D.C. 20554

Jessica Rosenworcel, Legal Advisor
Office of Commissioner Copps
Federal Communications Commission
445 12th Street, SW, Room 8-A302F
Washington, D.C. 20554

Barry Ohlson, Legal Advisor
Office of Commissioner Adelstein
Federal Communications Commission
445 12th Street, SW, Room 8-C302
Washington, D.C. 20554

Scott Bergmann
Office of Commissioner Adelstein
Federal Communications Commission
445 12th Street, SW, Room 8-C302
Washington, D.C. 20554

Carol Matthey, Deputy Bureau Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW, Room 5-C451
Washington, D.C. 20554

Jeffrey Carlisle, Sr. Deputy Bureau Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Narda Jones, Esq., Acting Div. Chief
Telecommunications Access Policy Div.
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Cara Voth, Esq.
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW, Room 5-A640
Washington, D.C. 20554

Anthony Dale, Deputy Division Chief
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW, Room 5-A425
Washington, D.C. 20554

Diane Law Hsu, Acting Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW, Room 6-A360
Washington, D.C. 20554

Cathy Carpino, Deputy Division Chief
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW, Room 5-B550
Washington, D.C. 20554

_____/s/
Steven M. Chernoff